



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153129

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services correctly terminated Petitioner's FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynnae Boyenga, Fraud Investigator
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On July 19, 2013, Petitioner completed an ACCESS application for FoodShare benefits, in which she did not include the father of her children in her household. (Exhibit 2)

3. On September 30, 2013, the agency sent Petitioner a notice indicating that as of November 1, 2013, her FoodShare benefits would be ending because her household income was over program limits. (Exhibit 7)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 25, 2013. (Exhibit 1)
5. Petitioner shares a residence with her two children, with [REDACTED], the father of her children and [REDACTED] parents. Petitioner has share a residence with [REDACTED] since 2011. (Testimony of Petitioner)
6. Petitioner and [REDACTED] each pay \$300 in rent to [REDACTED] parents. Petitioner is responsible for her share of the utilities. (Testimony of Petitioner)
7. Petitioner earns \$1,005.21 per month and [REDACTED] earns \$3,015 per month. (Exhibit 7)
8. No one in Petitioner's Food Unit is elderly, blind or disabled. (Testimony of Petitioner)

DISCUSSION

Petitioner did not dispute the agency's calculation of her income or [REDACTED] income. However, Petitioner contended that the agency erred by including [REDACTED] in her assistance group.

The Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

A Food Unit is defined as on or more persons who live in the same household and purchase and prepare food together for home consumption. *FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

A Food Group is defined as people who are in the same Food Unit and pass all the individual non-financial criteria. *FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.*

However, there are also special relationship rules that govern who is included in a Food Unit. The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

7 C.F.R. §273.1(b)(1); See in accord, FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

Thus, the father of Petitioner's children must be included as part of Petitioner's household and food unit.

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. The allotment calculation is then based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1.

Because the father of Petitioner's children must be included in her household, his income must also be counted when determining Petitioner's eligibility for FoodShare benefits. It is undisputed that Petitioner's household income is as follows:

\$3,015 per month from [REDACTED]
+\$1005.21 per month from Petitioner

\$4020.21 Total Household Income

To be categorically eligible for FoodShare benefits, household income must be below 200% of the Federal Poverty Level (FPL). *FSH* §4.2.1. For an assistance group of 4, 200% of FPL is \$3926 in monthly income. *FSH* §8.1.1 \$4020.21 is over the \$3926 / 200%FPL income limit. Consequently, the agency correctly terminated Petitioner's FoodShare benefits.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner's FoodShare benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

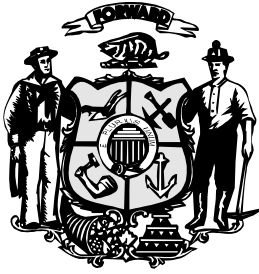
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of November, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 25, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability